

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Monga	
Application No.: 09/930097	Group Art Unit: 2157
Filed: 08/15/2001	
Title: System, Device and Method for Bandwidth Management in an Optical Communication System	Examiner: Alam
Attorney Docket No.: 120-176 14984BAUS01U	
Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

The following remarks are provided in response to the Office Action of June 23, 2008. Claims 1-12 and 14-36 are pending in this application. All of the pending claims are rejected. A Notice of Appeal is being filed contemporaneously with this Request.

Claims 1-12 and 14-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,681,232 (Sistanizadeh) in view of US 6,728,484 (Ghani). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The Examiner cites Sistanizadeh at column 2, lines 63-67; column 5, lines 54-67; column 6, lines 54-67; and column 7, lines 10-40 as describing the limitation of an application programming interface operative to receive input from

a user application indicative of application-specific bandwidth management service requirements, variations of which are recited in the independent claims. The cited passages fail to support the examiner's assertion because they specifically state that input is provided by a human being. For example, Sistanizadeh states at column 2, lines 50-52 that "the user interface is accessible both by *carrier staff personnel and by end-use customers.*" (emphasis added). This point is reinforced at column 2, lines 63-67 which states that "the application also interacts with elements of the extended-area data communications network to control service traffic through the network, for example to increase a customer's bandwidth upon request *as input by the customer or by carrier staff.*" (emphasis added). Further, as stated at column 5, lines 61-64, "the *network operator* manages individual customer bandwidth at the network edge and ensures that all customers' CIR rates can be met by adequate provisioning of the backbone network." (emphasis added). Still further, as stated at column 6, lines 59-62, "the SLM 100 may be *accessed by carrier personnel*, for example at the network operations center (NOC) or by *customers*, using a web based interface and appropriate communications links." (emphasis added). Such statements show that the Sistanizadeh interface does not receive input from a user application, but rather from a user or other personnel. This distinction illustrates one of the advantages of the claimed invention. In particular, installing a new application and having the application itself request resources from the carrier network is faster and less prone to error as compared with having an enterprise IT person estimate required resources and contact carrier personnel to manually provision those resources. In other words, the invention helps to obviate the need for expert assistance and manual changes that typically involve both the customer and the carrier.

It should also be noted that the applications described in Sistanizadeh are not user applications that require network services, but rather the server applications which monitor and control network services. The SLM cannot reasonably be interpreted as performing both the user application and optical service agent (OSA) functions. The significance of the distinction

between the OSA and the user application is emphasized by the claim limitation which recites that application-specific services are provided *by the OSA in response to signaling from the application*. As described in the specification with reference to Figure 6, the OSA (610) provides application-specific services.¹ Further, with reference to Figures 6 and 7, the OSA (610) includes an application programming interface (API) with various primitives for allowing a user application to access user-controllable and user-customizable features to prompt the OSA to provide the application-specific services.² In contrast, Sistanizadeh teaches that traffic requirements are defined and handled on the basis of traffic class.³ Similarly, Ghani provides “channel (lightpath) provisioning for higher layer networking protocol clients such as IP, ATM, Frame Relay, and SONET/SDH.”⁴ Consequently, the cited combination fails to suggest provisioning application-specific services in response to signaling from the application as recited in claims 1, 12, 24 and 31.

The dependent claims further define the invention, and are allowable for the same reasons as their respective base claims. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Withdrawal of the rejections of claims 1-12 and 14-36 is therefore requested.

¹ page 13, line 20

² page 14, lines 21-27; page 15 lines 2-3

³ column 6, lines 10-14

⁴ column 7, lines 52-55

For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

9/23/2008
Date

/Holmes W. Anderson/
Holmes W. Anderson, Reg. No. 37,272
Attorney/Agent for Applicant(s)
Anderson, Gorecki & Manaras LLP
33 Nagog Park
Acton, MA 01720
(978) 264-4001

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